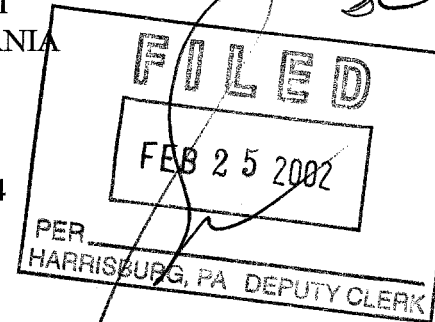


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IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

PHAN HUE	:	CIVIL ACTION
V.	:	NO.: 1:01-CV-1064
JAMES UPDIKE, P.A., JOSEPH	:	
MATALONI, EDWARD O'BRIAN	:	(Judge Kane)
and DALE HAZLAK	:	Magistrate Judge Smyser)



MOTION OF JAMES UPDIKE, P.A. TO DISMISS THE COMPLAINT OF PHAN HUE

James Updike, P.A. ("Updike") respectfully requests that this Court grant his motion to dismiss the complaint of Phan Hue ("Hue") and states in support thereof the following:

1. Hue, an inmate at the State Correctional Institution at Retreat ("SCI-Retreat") has filed a complaint pursuant to 42 U.S.C. §1983 against Updike, a physician assistant employed by a private corporation to provide medical care to inmates in the correctional system of the Commonwealth of Pennsylvania, Joseph Mataloni, Edward O'Brian and Dale Hazlak contending that they provided appropriate medical care to him. A copy of the complaint appears hereto as Exhibit "A".
2. Updike has filed this motion to dismiss requesting that this complaint be dismissed on two separate grounds. First, Hue has failed to plead exhaustion of his administrative remedies. Consequently, based on 42 U.S.C. §1997e(a) his complaint must be dismissed.
3. Second, Hue has failed to plead a serious medical need. Consequently, he has not stated a cause of action pursuant to 42 U.S.C. §1983 based on deliberate indifference to a serious medical need.

WHEREFORE, James Updike, PA respectfully requests that his motion to dismiss the complaint of Phan Hue be granted.

GOLD, BUTKOVITZ & ROBINS, P.C.

BY: 

ALAN S. GOLD
Attorney for Defendant,
James Updike, P.A.